

## **County of San Diego - Negotiated Work Plan 06-07**

### **Program Resources**

#### **PROGRAM STAFF**

Currently, staffing for County of San Diego Pesticide Regulatory Program (PRP) consists of ten full-time inspectors. There is currently one vacancy. Four of the inspectors are bilingual, and all are licensed to perform pesticide inspections. The County has three fewer inspector positions than in 2000 due to lack of available funding, which results in fewer inspections being performed. Two supervising inspectors and one deputy agricultural commissioner oversee the program, and four clerks provide support. Several staff members have over 15 years of experience in pesticide regulation.

PRP staff is distributed primarily by geographic area, but some inspectors work Countywide on specific concerns. One position is assigned to licensing issues, including inspection of pest control businesses and associated complaints; one position is assigned full-time to structural pest control; one position is assigned to schools and government agencies; and one position is assigned to handle most illness and injury complaints. Three positions perform structural pest control part-time, that when added to the full-time position, provide the equivalent of two structural positions.

#### **COMMUNITY**

San Diego is a diverse community consisting of a large urban area with a population of approximately three million, an international border with Mexico, military installations and a farming community of over 5,000 farms. San Diego ranks 8<sup>th</sup> in crop production value in the State of California, and agriculture is San Diego's 5<sup>th</sup> leading economic sector. Local growers produce high value crops such as nursery products and avocados on land mostly interspersed with residential and other sensitive sites.

It is estimated that approximately 12,000 farm workers are employed in San Diego during the height of the growing season. This work force is primarily employed directly by growers, but some workers are employed through the 36 registered farm labor contractors working in the County. Farm worker housing is limited, contributing to pesticide regulatory compliance concerns over clean work clothing, showers and decontamination. Some farm workers occupy makeshift camps with limited resources, especially potable water and water for sanitation.

Most of San Diego's farms are small, family-owned operations with fewer than nine acres. On-farm employees handle most pest control decisions and applications.

Pesticide applications generate calls and concerns from area residents, especially when aerial applications are conducted. The combination of agricultural/urban interface and overall population growth has resulted in an increase in pesticide-related complaints by neighbors of farms, and neighbor vs. neighbor complaints of misuse. Approximately 60 such complaints were received last year. This is in addition to the illness investigations forwarded from the Department of Pesticide Regulation (DPR), which are primarily pesticide injuries associated with antimicrobial use by hospitals, janitorial services and restaurants.

In addition to agricultural/urban interface issues, San Diego has a large structural pest control industry. More than 200 structural pest control companies are registered in San Diego, conducting an average of 20,000 fumigations annually. San Diego also has a significant landscaping industry. These two industries account for the majority of urban pesticide applications, other than applications by homeowners.

## Restricted Materials Permitting

### PERMIT-EVALUATION

Approximately 1000 restricted materials permits are issued each year in San Diego County; 950 permits are agricultural and 50 are non-agricultural. Roughly 90% of the permits issued are provided to the operator of the property, with the majority of the permits issued for only 1-3 chemicals.

San Diego staff has reduced the number of chemicals per permit over the last 10 years by reviewing permits from year to year and by talking with growers about their need for certain chemicals and suggesting alternatives. This interaction, combined with the availability of lower toxicity pesticides, has led to an overall decrease in the number of restricted materials used.

Due to the continued urbanization of San Diego County, the permits that are issued need to accurately reflect sensitive sites (surrounding homes, businesses, schools, hospitals or habitat) that may be impacted by the applications. Therefore, permits are evaluated based on field observation of the site.

### SPECIFIC PERMIT ISSUES

Field fumigant use is limited to the remaining row crop operations in the northern portion of the County and smaller (measured by square feet) applications for soil fumigation in ornamental plant production. The eventual phase-out of Methyl Bromide has led to the use of alternative materials such as Telone, In line and Metam Sodium. Permit mitigation is conducted on a site-by-site basis.

At the discretion of the Commissioner, and in consideration of local conditions and hazards, a permit can be required for the use of any pesticide. In San Diego County

the use of Agri-Mek (a miticide) by air was restricted in 2005. This material is used in avocado groves and due to the terrain is applied by air. Agri-Mek was previously a restricted use material that was applied under a Section 18. In 2006, Agri-Mek was labeled for use in California, but remained a federally restricted material. Review of past complaints and drift concerns led the Commissioner to retain the permit requirement indefinitely.

## **SITE MONITORING**

San Diego County currently conducts pre-site inspections on 5% of Notices of Intent (NOIs) submitted. To address areas with potentially greater hazards and/or a greater potential for complaints, priority will be given to areas where field fumigation applications or aerial applications will be conducted. Priority will also be given to applications at sensitive sites.

### **Goal**

Ensure that at least 5% of NOIs for restricted materials are reviewed prior to the applications for compliance with permit requirements.

### **Deliverables**

1. Conduct presite monitoring of at least 5% of total NOIs received, with emphasis placed on fumigation, aerial and sensitive site applications.

### **Measures**

Presite inspections enable County personnel to monitor the site at which a restricted material will be used for any changes that may have occurred since the permit was issued. Presite inspections also provide an opportunity to confirm that permit conditions are being followed. In choosing to give emphasis to aerial applications, fumigations and sensitive sites, the County is focusing available resources on applications with the highest potential for non-compliance and potential complaints from area residents.

## **Compliance Monitoring**

The County of San Diego normally conducts 1,100 to 1,500 pesticide inspections per year. This year, the proposed number of inspections is being reduced to 900 to allow reorganization of the Notice of Proposed Action (NOPA) process as developed during the Business Process Re-Engineering effort. This number may need further adjustment during the year depending on the amount of time NOPA training and writing takes, and the number of complaints and illness investigations received. Approximately one-third of the work is related to structural inspections. Every attempt is made to balance the workload so that urban concerns are addressed and agricultural worker health and safety goals are met. Inspections are usually prioritized based on types of materials used (e.g. fumigants, restricted

materials), frequency of applications, number of workers, past history and complaints.

The County has two positions allotted to structural pest control. Therefore it is necessary to distribute those hours to provide the most effective compliance monitoring possible. PRP staff will continue to inspect fumigation aeration activities by Branch 1 companies. This is part of an ongoing compliance issue this County identified four years ago: Branch 1 companies conduct aeration correctly when fumigations are monitored, but sometimes fail to follow regulations in the perceived absence of an inspector. This monitoring program will also be influenced by a proposed aeration procedure change in the Vikane® label which will change the requirements for use of the Tarp Removal and Aeration Plan.

The County will work with the DPR Senior monthly to ensure inspections are conducted according to the Inspection Procedures Manual.

## **INSPECTIONS**

Unless responding to a complaint or illness investigation, inspections will focus on applications using more toxic formulations, more problematic methods of application (air and power spraying), sensitivity of the site or surrounding areas, and past history. Inspectors will record their findings in the “as found condition.” All non-compliances will receive appropriate compliance or enforcement actions as required by the Enforcement Response Regulations (violation notice, warning letter, civil penalty, or referral to the District Attorney, City Attorney or state agencies).

### **Goal**

Maintain an effective pesticide monitoring system to assure safe use of pesticides in all areas of San Diego County.

### **Deliverables**

1. Conduct approximately 700 inspections with growers, pest control applicators, dealers and Pest Control Advisors.
2. Maintain structural inspection levels, to reflect gradual urbanization and increased pesticide activity in urbanized areas. The County will conduct and estimated 200 structural inspections for Branch 1 (termite fumigation), 2 (general pest) and 3 (termite control utilizing slab treatments). Priorities will be fumigation inspections and other applications using a Category 1 (Danger) label due to toxicity.
3. Monitor applications that have historically received or may receive public complaint. In San Diego County the Vector Control District is utilizing larvicides to reduce mosquito populations to prevent outbreaks of West Nile Virus (WNV). These applications are conducted by helicopter to standing

water in residential and urban areas throughout the County. These applications are easy for the public to observe and have resulted in complaints. PRP staff will monitor at least 2% of all WNV applications in San Diego County to assure that applications are being conducted correctly.

4. Compliance Assistance: Utilize the Farm Worker Health Initiative (FWHI) and outreach events to update pesticide information for applicators, fieldworkers and the general public. Provide speakers for FWHI meetings with community organizations and staff 12 outreach events. (CAPCA, health fairs, etc). Conduct five field worker training sessions utilizing bilingual staff.
5. Assign workload goals to inspectors based on area characteristics such as numbers of permits, types of permits, and number of operators. Assign inspection goals to each pesticide inspector to assure attainment of the county's strategic initiative(s) for a safe and livable community and to protect the environment
6. Implement a modified warning letter that informs individuals when a Decision Report has been written on their behalf to inform them of potential future fines. When appropriate, the letter would also request documentation that certain violations have been corrected and a description of how future violations of the same type will be prevented, in lieu of PRP conducting a re-inspection. Types of violations where documentation could be substituted for a re-inspection include failure to register with San Diego County, failure to submit use reports, and failure to document employee training. Re-inspections would still be conducted where appropriate, such as when the use of personal protective equipment needs to be confirmed.

### **Measures**

Inspection and outreach are methods of interacting with the regulated community consisting of growers, applicators, fieldworkers, structural companies and agricultural pest control businesses. Most efforts are focused on the regulated community. Inspections identify areas of non-compliance that need corrective action. Inspection activities and outreach activities provide information to the regulated community and also serve as a method of obtaining feedback for County staff. The measure of success would be a community that is:

- knowledgeable of pesticide laws and regulations;
- aware that these laws and regulations are intended to protect the public, workers and the environment
- willing to report violations or complaints; and
- informed about the method for filing a pesticide-related complaint.

### **INVESTIGATION RESPONSE AND REPORTING**

Approximately 60 to 70 investigation reports are completed each fiscal year. An additional 30 to 40 “public reports” are produced documenting complaints that cannot be confirmed as pesticide related. The majority of complaint investigations relate to agricultural/urban interface or neighbor-versus-neighbor conflicts concerning pesticide use. Illness reports received from DPR are generally antimicrobial complaints.

Since 2001 the San Diego County Department of Agriculture/Weights and Measures has sponsored a coalition of non-profit and government agencies to improve the overall health of farm workers. The Farm Worker Health Initiative (FWHI) works on local issues of worker safety including pesticide illness reporting. Although the statewide pesticide enforcement programs reflect an overall reduction in injury and illness from pesticide applications, it is not clear whether this is due to an actual reduction in illnesses or failure to comply with reporting requirements. FWHI members continue to report that workers do not seek medical care for a variety of reasons including fear of potential retaliation, limited access to medical care and belief in cultural traditional cures. The FWHI works with local health clinics, Office of Environmental Health Hazard Assessment (OEHHA), DPR and the local public health officer to encourage reporting of illnesses. We believe that most sub-acute/chronic exposures (rashes and allergies) are not being reported. The County of San Diego, along with two other counties, has been selected by OEHHA to pilot a new web-based pesticide illness reporting system that will incorporate this issue into the existing Morbidity and Mortality Report physicians use to notify the public health officer of communicable diseases. It is hoped that, by adding a mechanism for reporting pesticide illnesses into an existing and widely recognized system for reporting, the result will be more accurate reporting by physicians.

**Goal**

1. Produce timely investigative reports that meet State guidelines for submission and quality.
2. Respond to public complaints of pesticide misuse in a timely manner.
3. Fully investigate all complaints of pesticide exposure reported to this office.

**Deliverables**

1. Maintain timely response and submission of investigative reports. Reports will meet State guidelines for submission, or reasons why the guideline cannot be met will be documented and provided.
2. Continue to follow state guidelines for format and information, as found in the Investigative Procedures Manual. Continue to develop and utilize a referral list to other agencies for common complaints that are not within the role or jurisdiction of the County Agricultural Commissioner.
3. Continue to participate, as a pilot county, in the development of Web-based pesticide illness reporting.

4. Maintain a monthly complaint log, available to DPR staff, in compliance with enforcement letter 95-053.

**Measures**

Pesticide investigations provide information to DPR on labeling issues, reentry intervals concerns, rates of pesticide use, etc. In order for DPR to make determinations of exposure, the content of the investigations must provide enough information for the reviewer to identify where problems may be occurring. DPR must also receive the initial report in a timely fashion. It is a measure of success that the reports are submitted in a timely manner (which results in timely response) and that the finished reports are complete; include labels, enforcement actions and exposure information. Finally, it is important that the County encourages reporting and responds to all complaints received.

**Enforcement Response**

All non-compliances noted when conducting inspections or investigations are recorded in the "as found" condition. The inspection form with the appropriate notation serves as the violation notice. Separate violation notices are issued for Cease and Desist Orders or for violations found as the result of investigations.

Using the Kaizen Method, the existing departmental system of handling civil penalty actions was re-engineered. Under the Food and Agricultural Code Section 12999.5, the Commissioner is identified as the sole issuing authority for civil penalty actions. Fine amounts and actions are based on the Enforcement Response Policy, the Food and Agricultural Code, Business and Professions Code, and Titles 3 and 16 of the California Code of Regulations.

The following outline of procedural changes will substantially reduce the timeframes involved in civil penalty actions. Beginning November 1, 2006, the target for mailing simple Notices of Proposed Action (NOPAs) is within 60 days of the Notice of Violation.

The new process shifts the responsibility for determining the appropriate enforcement action and case preparation to the Agricultural/Standards Inspector.

In most cases, Inspectors will write complete compliance inspection reports in the field with the person being inspected present, rather than returning to the office to write a narrative. Inspectors will enter the non-compliance information into a database, review the violation history of the individual or company, and determine the appropriate enforcement action according to the Enforcement Response Policy, and California Code of Regulations Title 3 Sections 6128 and 6130 (currently under revision). Inspectors will gather all necessary evidence and prepare the NOPA. Inspectors will determine whether the NOPA is simple or complex. Supervising Agricultural/Standards Inspectors will propose fine amounts and will prepare fine

justifications. If the NOPA is “simple,” the Supervisor will give the NOPA to the Commissioner for signature and clerical staff will mail it.

If the NOPA is “complex,” the Supervisor will give it to the Civil Actions Investigator for review, but the NOPA will already be drafted and the fine justification already prepared.

Inspector training is nearly completed. Guidelines for consistency and uniformity, such as determining the enforcement actions within the resources of the department, evidence packet preparation, identification of responsible parties, and determining simple vs. complex cases are nearly complete.

In fiscal year 05/06, PRP proposed approximately 130 civil actions.

In order to better track compliance history, a database will be developed that will enable queries that identify companies and/or code sections and the rates of non-compliance.

**Goal**

Following the provisions of the Enforcement Response Policy, mail simple NOPAs within 60 days of the violation notice. To speed the process, Inspectors will determine appropriate enforcement response within one week, supervisors will approve the response within one week, and once the approval is received, inspectors will draft the NOPA before conducting unrelated, unscheduled inspections. NOPAs will be one of the top priorities, second only to Priority Investigations and triage of illness investigations and complaints.

**Deliverables**

1. Take appropriate enforcement actions with documented consideration of the individual circumstances of each case.
2. Develop a database to provide an overall compliance history for individuals and businesses.
3. Prepare written guidelines for determining the enforcement actions within the resources of the department, evidence packet preparation, identification of responsible parties, and determining simple vs. complex cases. Working drafts of these documents will be available for review by October 31, 2006.
4. Inspectors are to begin writing simple NOPAs on November 1, 2006.
5. NOPAs for violations classified as “serious” will be sent via fax or e-mail to DPR Seniors for review prior to being mailed to respondents.
6. Notify the DPR Senior in a timely manner of all ACP/SCP hearings requested.



7. Notify the DPR Senior in a timely manner of any enforcement cases referred to agencies such as the Structural Pest Control Board for licensing action or to the city/district attorney for prosecution, etc.

**Measures**

Enforcement actions are utilized by the County Agricultural Commissioner to promote compliance with pesticide laws and regulations. The Commissioner selects the appropriate level of enforcement action required to achieve regulatory compliance. The measure of success for the program is the application of these actions in a manner that improves the compliance level of the individual or company to which they are applied and the improved overall compliance with individual law or regulatory sections.

The proposed database will be utilized to analyze the compliance/non-compliance found during inspections. The measure of success for the database is improved identification of non-compliance by individual, business and/or law or regulation section number.

**Work Plan Duration**

San Diego County will revise its work plan annually.